

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**FRANKIE M. MILLER, JR. (#1070339),**

**Petitioner,**

**v.**

**ACTION NO. 2:19cv595**

**HAROLD W. CLARKE,  
Director, V.D.O.C.**

**Respondent.**

**REPORT & RECOMMENDATION FOR DISMISSAL**

This matter is before the court on pro se Petitioner Frankie M. Miller, Jr.'s ("Miller" or "Petitioner") Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody. (ECF No. 1). Miller also paid the required \$5.00 filing fee. (ECF No. 6). Miller's petition challenges his 2003 convictions and sentences from the Henrico County Circuit Court for capital murder and aggravated malicious wounding. This is Miller's second federal post-conviction challenge to the Henrico County convictions.

Because Miller's current petition appears to challenge the same convictions and sentences that he previously challenged in Civil Action Nos. 2:16cv645, which was also filed in this court, his current petition falls under the successive petition provisions of the federal habeas statute. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." This court has not received an order from the Court of Appeals for the Fourth Circuit authorizing the consideration of Petitioner's application for a writ of habeas corpus. In fact, although Miller's petition states a

“Motion for Order to File Second Habeas was filed with the United States Court of Appeals for the Fourth Circuit on September 26, 2019,” the Fourth Circuit denied his request by Order entered October 21, 2019. Therefore, this court is precluded from considering Petitioner’s application for a writ of habeas corpus.

Because Miller raises the same errors he previously raised in his prior petition without receiving leave from the Fourth Circuit, the undersigned RECOMMENDS that Miller’s petition be DISMISSED for lack of jurisdiction as successive under 28 U.S.C. § 2244(b)(3)(A).

By copy of this Report and Recommendation, the Petitioner is notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Petitioner may file with the Clerk written objections to the foregoing findings and recommendation within fourteen (14) days from the date of mailing of this Report to the objecting party, 28 U.S.C. §636(b)(1)(C), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure.

2. A district judge shall make a de novo determination of those portions of this report or specified findings or recommendations to which objection is made.

Petitioner is further notified that failure to file timely objections to the findings and recommendations set forth above will result in waiver of the right to appeal from a judgment of this Court based on such findings and recommendations. Thomas v. Arn, 474 U.S. 140 (1985); Carr v. Hutto, 737 F.2d 433 (4th Cir. 1984); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is DIRECTED to mail a copy of this Report and Recommendation to the  
Petitioner at the address on file with the court.

/s/   
\_\_\_\_\_  
Douglas E. Miller  
United States Magistrate Judge

\_\_\_\_\_  
DOUGLAS E. MILLER  
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia

December 18, 2019

**Clerk's Mailing Certificate**

A copy of the foregoing was mailed this date to the Petitioner at the addresses listed below:

**Frankie M. Miller, Jr.**  
#1060756  
Greensville Correctional Center  
901 Corrections Way  
Jarratt, VA 23870

Fernando Galindo, Clerk

By \_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_, December 18, 2019